Page (1)

IN THE HOUNRABLE CHHATTISGARH HIGH COURT OF JUDICATURE

AT BILASPUR (C.G.) Single Bench

Second Appeal No. 31 /2004

APPELLANT : Asga r Ali S/o Gulam Ali, aged about 55 years, Residence of Baijnathpara, Rear of the Allahabad Bank, Raipur, Distt. Raipur (C.G.)

VERSUS

RESPONDENTS :

(1) Ramesh Kumar S/o Ramnarayan, aged about 62 years.

(2) Radheshyam S/o Ramnarayan Rathore aged 57 years.

(3) Ganesh S/o Ramnarayan Rathore aged about 54 years.

(4) Madhuker S/o Ramnarayan , aged 50 years.

(5) Sita Ram S/o Ram Narayan Rathore aged about 47 years.

All are resident of Rathore Chowk Raipur Tahsil & Distt. Raipur C.G.

R.R. No. 2677/04
Presented by Shri ... O.K. Beg
dated 29-11-04

SECOND APPEAL UNDER SECTION 100 OF CIVIL PROCEDURE CODE :-

(110)

HIGH COURT OF CHHATTISGARH AT BILASPUR

S.A. No. 31/2005

Appellant : Asgar Ali

VERSUS

Respondents : Ramesh Kumar and others

Shri M.K. Baeg learned Counsel for the appellant.

J U D G M E N T

(Passed on 07-12-2005)

Dhirendra Mishra, J

The appellant has preferred this appeal against the judgment and decree dated 15.10.2004 passed by 13th Additional District Judge (FTC) Raipur in Civil Appeal No. 4-A/2004 by which the appeal preferred by the appellant against the judgment and decree dated 17.5.2003 passed by the trial Court in Civil Suit No. 4-A/2002 has been dismissed.

2. The substantial question of law involved for adjudication of this appeal according to learned counsel for the appellant is – " Whether in the absence of the pleading that there was a partition of the property after the death of original plaintiff Ram Narayan Rathore between the respondents/plaintiffs and on the basis of such partition the suit accommodation came in the share of plaintiff No.5, the suit could have been decreed on the ground of bona fide necessity of plaintiff No.5 Sita Ram? Another substantial question of law proposed by the counsel for the appellant is – " Whether the lower Appellate Court was justified in decreeing the suit of the plaintiffs ignoring the evidence on record that the plaintiffs are in possession of a big accommodation just behind the suit accommodation which is suitable for the plaintiffs in all respect for carrying on their business by recording a perverse finding that the plaintiffs do not have any alternative suitable accommodation in the city of Raipur?

(VII)

3. From the pleadings of the respective parties it appears that the original plaintiff field a suit for ejectment of the defendant from the tenanted premises on the ground of non payment of rent for the period from March 1993 to October 1993 under section 12 (1) (e) of the Act and further on the ground that the suit accommodation is required for the business of his son Sitaram as there is no alternative suitable accommodation available in the city of Raipur for the said purpose. The suit was contested by the defendant on the ground that there is no arrears of rent as claimed and that the original plaintiff is possessed of suitable accommodation for the business purpose of his son Sitaram.

4. Learned counsel for the appellant relying on the decision of High Court of Madhya Pradesh in the matter of **Ramnth Vs. Rakesh Kumar reported in 1982 MPLJ Note 25** submits that where the landlord dies during the proceedings taken under section 12 (1) (f) of the Act and the ground taken in the suit is primary need of the landlord himself which comes to an end after his death and therefore, no decree of eviction could have been passed as the need of the landlord should exist till the end of the suit. However, in the instant case the suit was filed on the ground of necessity of Sitaram, the son of the original plaintiff who was subsequently brought on record after the death of his father Ramnarayan Rathore and need of Sitaram continued even after the death of his father and did not come to an end and therefore the argument in this regard advanced by the learned counsel for the appellant is of no consequence. So far as the contention of the appellant that in the absence of evidence of partition between the legal heirs of the original plaintiff, the suit could not be decreed on the ground of bona fide requirement of plaintiff No.5 is concerned, even for the sake of argument the property is deemed to be joint family property for the need of plaintiff No.5 who is the joint owner and therefore the suit can be decreed under section 12 (1) (f) of the Act and therefore, no substantial question of law as proposed by the appellant in this regard is made out for the adjudication of this appeal. So far as the second substantial question of law proposed by the plaintiff that even if alternative suitable accommodation was available as per the evidence available on record which has been ignored is concerned, both the Courts

(42)

below after discussing the material available on record have arrived at the conclusion that the accommodation which is available to the plaintiff is not suitable for the business of plaintiff No.5 and thus have decreed the suit by recording a finding that the plaintiffs do not have any alternative accommodation.

5. Thus, no substantial question of law is involved for adjudication of this appeal and the appeal being devoid of substance is hereby dismissed at the admission stage itself.

Sd/-
Dhirendra Mishra
Judge